IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 3905 of 2006(M)

OS.616/1999 of MUNSIFF COURT, MANJERI

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PETITIONER:

SAIDALAVI MUSALIYAR,
S/O.CHEKKUTTY MUSALIYAR, CHALAYI HOUSE,
P.O.KUMMINIPARAMBA, MALAPPURAM DISTRICT.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS:

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1. P.A.CHERIYA HASSAN HAJI,
(DIED).

2. P.A.KUNJALANKUTTY,
S/O.KUNHAPPAN HAJI, ARECODE ROAD,
P.O.KONDOTTY, KONDOTTY VILLAGE,
MALAPPURAM DISTRICT.

3. P.A.VEERANKUTTY,
S/O.KUNHAPPU HAJI, P.O.KONDOTTY, KONDOTTY VILLAGE,
MALAPPURAM DISTRICT.

4. P.A.ABOOBACKERKUTTY,
T.K.HOUSE, P.O.KONDOTTY,
KONDOTTY VILLAGE, MALAPPURAM DISTRICT.

5. DR.PARAMMAL AMBADI MUNNAS,
ATHIKKAVIL HOUSE, P.O.KONDOTTY,
KONDOTTY VILLAGE, MALAPPURAM DISTRICT.

6. P.A.NAVAS, ATHIKKAVIL HOUSE,
P.O.KONDOTTY, KONDOTTY VILLAGE,
MALAPPURAM DISTRICT.

7. P.A.JIMMAS,

ATHIKKAVIL HOUSE, P.O.KONDOTTY,
KONDOTTY VILLAGE, MALAPPURAM DISTRICT.

8. P.A.NIYAS, ATHIKKAVIL HOUSE,
P.O.KONDOTTY, KONDOTTY VILLAGE,
MALAPPURAM DISTRICT.

9. K.UMMATHIKUTTY UMMA,
W/O.KUNHIMON, BALIKKAD HOUSE,
P.O.KOORIYAD, THIRURANGADI, MALAPPURAM DISTRICT,
VENGARA VILLAGE.

10. M.P.AHAMMED KURIKKAL,
M.P.A, HOUSE, P.O.N.S.S.COLLEGE,
MANJERI, MANJERI VILLAGE,
MALAPPURAM DISTRICT.

11. P.A.KUNJIFATHIMA,
W/O.NALAKATH ABDUL KAREEM,
P.O.NILAMBUR, NILAMBUR VILLAGE,
MALAPPURAM DISTRICT.

12. P.A.MAMIYYA,
W/O.LATE K.C.ABU, KANNAMGARA HOUSE,
P.O.MADAVOOR, KUNNAMANGALAM, MADAVOOR VILLAGE,
KOZHIKODE DISTRICT.

13. K.MOIDEENKUTTY,
ELAYEDATH HOUSE, P.O.PARAMBILPEEDIKA,
KONDOTTY VIA., PERUVALLUR VILLAGE,
MALAPPURAM DISTRICT.

14. P.A.KUNHAPPU DOCTOR,
S/O.LATE CHERIYAN HASSAN HAJI,
VALAPPIL HOUSE, KARIPPUR AMSOM,
P.O.KUMMINIPARAMBA.

15. P.A.ITHIKUTTY UMMA,
W/O.LATE T.V.ABDULLA HAJI,
VAKKAPATTAYIL HOUSE, VADAMUKKU POST,
MARANCHERI, MARANCHERI VILLAGE,
MALAPPURAM DISTRICT.

16. P.A.AYISHA,
W/O.K.V.ABOOBACKER HAJI,
P.O.ANAKKAYAM, ANAKKAYAM VILLAGE,
MALAPPURAM DISTRICT.

17. P.A.KUNHIPATHUMMA,
W/O.ADOCATE P.MUHAMMED,
MALIYEKKAL HOUSE, P.O. B.P. ANGADI,
TIRUR, THALAKKAD VILLAGE, MALAPPURAM DISTRICT.

18. P.A.PATHUMMUNNI,

W/O.SOOPYKUTTY, P.O.OTHUKKUNGAL,
PARAPPUR VILLAGE, MALAPPURAM DISTRICT.

19. P.A.SULAIKHA,
W/O.DR.E.K.ALAVIKUTTY,
P.O.KANNAMANGALAM VILLAGE,
MALAPPURAM DISTRICT.

20. DR.P.A.KUNHAPPU HAJI,
S/O.KUNJAPPU HAJI, KARIPPUR AMSOM AND DESOM OF
TIRURANGADI TALUK.

21. P.A.NAZAR HAJI, S/O.MOIDEEN,
PARAMMAL AMBADI, KONDOTTY AMSOM,
KOLATHUR DESOM OF ERNADU TALUK.

22. P.A.SALEEM, S/O.MOIDEEN,
PARAMMAL AMBADI, KARIPPUR AMSOM AND DESOM OF
ERNADU TALUK.

23. P.A.KABEER,
P.B.NO.1211, JEDDAH, K.S.A.

24. P.A.LALU,
S/O.KUNJAPU HAJI, PARAMMAL AMBADI,
KARIPPUR AMSOM AND DESOM OF TIRURANGADI TALUK.

25. P.A.JAMEELA,
P.B.NO.1210, JEDDAH, K.S.A.

26. ITHIKUTTY UMMA,
W/O.E.VEERANUNNI MASTER,
P.O.VETTOM PERITHALLUR,
MALAPPURAM DISTRICT.

27. RAZIA, PARAMMAL AMBADI,
KARIPPUR AMSOM AND DESOM OF THIRURANGADI TALUK.

28. KUNJAPPU ALIAS KUNJIMON,
S/O.P.A.HASAN HAJI, PARAMMAL AMBADI,
KARIPPUR AMSOM AND DESOM OF TIRURANGADI TALUK.

29. MUHAMMED KUTTY ALIAS BAPPU,
PARAMMAL AMBADI, KONDOTTY AMSOM,
KOLATHUR DESOM OF ERNADU TALUK.

30. ITHIKUTTY UMMA,
PARAMMAL AMBADI, KONDOTTY AMSOM,
KOLATHUR DESOM OF ERNADU TALUK.

31. ATHIKKA, PARAMMAL AMBADI,
KARIPPUR AMSOM AND DESOM OF TIRURANGADI TALUK.

32. SAFIYA, PARAMMAL AMBADI,

KARIPPUR AND DESOM OF TIRURANGADI TALUK.

33. SAJITHA, PARAMMAL AMBADI,
KARIPPUR AMSOM AND DESOM OF TIRURANGADI TALUK.

34. NALLAT THODIKA AYISSAKUTTY,
W/O.CHERIYA HASSAN HAJI,
KARIPPUR AMSOM AND DESOM OF TIRURANGADI TALUK.

BY ADV. SRI.DEVIDAS.U.K FOR R2 TO R9

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True photostat copy of the plaint dated 20.12.99 and filed in O.S.616/99 on the file of the Munsiff Court, Manjeri.

Ext.P2:- True photostat copy of the written statement dated 12.8.2002 and filed in O.S.616/99 on the file of the Munsiff Court, Manjeri.

Ext.P3:- True Photostat copy of the issues raised in O.S.616 of 1999 on the file of the Munsiff Court, Manjeri.

Ext.P4:- True photostat copy of the order dated 21.3.2005 of the Appellate Authority, Land Reforms, Trichur.

Ext.P5:- True photostat copy of the affidavit filed in support of I.A.No.1607/2005

Ext.P6:- True photostat copy of the order dated 4.10.2005 made by the Munsiff Court, Manjeri in I.A.No.1607/2005.

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO. 3905 OF 2006

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Dated this the 19th day of December,2006

JUDGMENT

Petitioner is the plaintiff and respondents the defendants in O.S.616/99 on the file of Munsiff Court, Manjeri. This petition is filed under Article 227 of the Constitution of India challenging Ext.P6 order passed by the Munsiff dismissing the application filed to stay the suit till the disposal of the revision pending before this court.

2. Learned counsel appearing for petitioner and respondents were heard.

3. Petitioners filed the suit seeking a decree for declaration of title and injunction. The title set up in the plaint is the tenancy right as upheld by the Land Tribunal. A purchase certificate was obtained by petitioner from the Land Tribunal. Landlords/ respondents filed an appeal and the Appellate Authority set aside that order and

remanded the original application to the Land Tribunal. Challenging that order petitioner filed C.R.P.437/06 and C.R.P.362/06. Learned Munsiff dismissed the application for stay holding that even the number of the revision was not furnished and there is no necessity to stay the suit till the disposal of the revision pending before this court.

3. On hearing learned counsel appearing for petitioner and respondents, I do not find any reason to interfere with Ext.P6 order or to grant an order of stay as sought for by petitioner. As the position now stands, there is no final finding on the claim of tenancy raised by petitioner. Petitioner claimed tenancy right and sought a declaration of that right in the suit. Necessarily the suit has to be referred under section 125(3) of the Kerala Land Reforms Act as the question of tenancy arises for consideration. As the position stands the original order of the Land Tribunal was set aside and the case is remanded back to the Land Tribunal.As the order of

the Land Tribunal was set aside and case remanded, in the absence of a finding on tenancy, suit has to be stayed and referred to the Land Tribunal under section 125(3) of the Kerala Land Reforms Act. In such circumstance, I do not find any necessity to interfere with Ext.P6 order to grant an order as sought for.

Writ Petition is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006